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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,339	09/30/2003	Mickey L. Peshoff	P03-0242	5794

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EXAMINER

PAK, JOHN D

ART UNIT PAPER NUMBER

1616

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/675,339

**Applicant(s)**

PESHOFF, MICKEY L.

**Examiner**

JOHN PAK

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,7-9,15-18,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) 18,22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7-9 and 15-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/30/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

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Claims 1-2, 7-9, 15-18, and 22-23 are pending in this application.

Applicant's election with traverse of the invention of Group I in the reply filed on 11/14/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Accordingly, claims 1-2, 7-9 and 15-17 will presently be examined *to the extent* that they read on the mixture of vitamins A, D and E, as explicitly set forth in the Office action of 10/18/2005. Claims 18 and 22-23 are withdrawn from further consideration as being directed to non-elected subject matter.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 7 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Neigut (5,378,461).

Neigut explicitly discloses a topical composition for treating skin damage, which contains vitamins A, D and E (see claim 1; see also the table on column 5). There are numerous examples, including one with just olive oil and vitamins A, D and E (column 10, lines 55-58).

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Neigut's disclosure explicitly meets all of the claimed requirements in applicant's claims 1-2, 7 and 17. Since vitamin A is retinol (alternative name) and vitamin E is tocopherol (alternative name), subject matter claims 7 and 17 are explicitly disclosed. The claims are thereby anticipated.

Claims 1-2, 7-9 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas (US 4,857,321).

Thomas explicitly discloses an ointment composition that contains retinol palmitate (ingredient p in claims 1-2), cholecalciferol (ingredient x in claim 1 & ingredient w in claim 2), tocopherol acetate (ingredient v in claims 1-2), and a mixture of vitamins A and D<sub>3</sub> (ingredient w in claims 1-2).

It is noted that vitamin A is retinol, retinol palmitate is retinyl palmitate, and vitamin D<sub>3</sub> is cholecalciferol. The claims are thereby anticipated.

Claims 1-2, 8-9 and 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Derwent abstract 2000-617480 (abstracting RU 2146921).

Derwent abstract 2000-617480 explicitly discloses a composition for dermatological diseases, which contains retinol palmitate, tocopherol acetate, and ergocalciferol.

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As noted above, retinol palmitate is the same substance as retinyl palmitate. The claims are thereby anticipated.

All claims are anticipated by the explicit disclosures of the prior art. No claim is allowed.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Gary Kunz, can be reached on **(571)272-0887**.

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

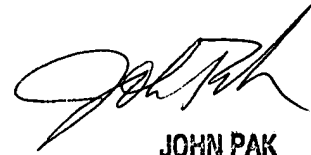
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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**JOHN PAK**  
**PRIMARY EXAMINER**  
**GROUP 1600**